

EXHIBIT 80

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CYNTHIA RUSSO, LISA BULLARD,)
RICARDO GONZALES, INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS)
LOCAL 38 HEALTH AND WELFARE FUND,)
INTERNATIONAL UNION OF OPERATING)
ENGINEERS LOCAL 295-295C WELFARE)
FUND, AND STEAMFITTERS FUND LOCAL)
439, on Behalf of Themselves and)
All Others Similarly Situated,)

Plaintiffs,)

vs.)

WALGREEN CO.,)

Defendant.)

)Case No.
)17-cv-2246

VIDEO-RECORDED REMOTE DEPOSITION OF
LYNETTE HILTON, Ph.D.
Tuesday, January 17, 2023
Volume I

*** CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER ***
Reported by:
CARLA SOARES
CSR No. 5908
Job No. 5645367
Pages 1 - 347

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VIDEO-RECORDED REMOTE DEPOSITION OF
LYNETTE HILTON, Ph.D., Volume I, taken on behalf of
Defendants, beginning at 9:07 a.m., and ending at
7:29 p.m., on Tuesday, January 17, 2023, before
CARLA SOARES, Certified Shorthand Reporter No. 5908.

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1 my restrictions.

17:32:31

2 Are you talking about Exhibit 3?

3 Q Well, you produced queries. You're aware

4 of the queries that have been produced through

5 counsel to us, your queries?

17:32:35

6 A I know that there were certain queries

7 that were produced.

8 Q And those queries came from you, correct?

9 A They came from -- yes, from -- from me and

10 my staff. Yes.

17:32:40

11 Q Well, did you -- did you do those queries

12 or did your staff do those queries?

13 MR. ALEXANDER: Objection to form.

14 THE WITNESS: My staff did the coding at

15 my direction.

17:32:44

16 BY MR. LEIB:

17 Q Ultimately, it's your work product,

18 correct?

19 A Yes.

20 Q And you're familiar with your queries,

17:32:46

21 correct?

22 A Yes.

23 Q And if there happens to be an error in

24 your queries, that's on you, not on your staff,

25 correct?

17:32:50

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1 THE WITNESS: That's fine with me. 17:33:10

2 MR. ALEXANDER: That works.

3 THE VIDEO OPERATOR: We're off the record
4 at 11:37 a.m.

5 (Recess, 11:37 a.m. - 11:48 a.m.) 17:33:12

6 THE VIDEO OPERATOR: On the record, the
7 time is 11:48 a.m.

8 BY MR. LEIB:

9 Q Dr. Hilton, in your list of materials
10 considered, you do include the 2015 sample data. 17:33:15

11 Are you familiar with the 2015 sample
12 data?

13 A Yes.

14 Q What is your understanding of what the
15 2015 sample data is? 17:33:18

16 A Well, it's outlined in more detail in the
17 Dymon declaration, but it's my understanding that
18 it's the transactions at Walgreens stores in six
19 different states for the year 2015.

20 Q And did you use the 2015 sample data in 17:33:23
21 any way in your analysis?

22 A I did -- I looked at it, yes. I ran
23 queries on it. I used it to test certain queries.

24 Q Did you produce those queries to us?

25 A I am not sure. 17:33:28

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1 Q We're unaware of any queries having been 17:33:29
2 produced relating to the 2015 data. And you
3 produced those?

4 MR. ALEXANDER: Counsel, it's something we
5 can take under advisement. I don't believe the 17:33:32
6 witness is in a position to respond to that
7 otherwise.

8 BY MR. LEIB:

9 Q What queries did you run on the 2015 data?

10 A That's -- sitting here today, I cannot 17:33:35
11 give you a list of all the queries I ran on the 2015
12 data.

13 As we go through the report, I might be
14 able to tell you certain things that I've looked at
15 using the 2015 data. But sitting here right now -- 17:33:40
16 I've been working on this case for a while. I ran
17 quite a few tests.

18 Q You said you -- you ran queries -- you ran
19 queries on it. You said you used it to test certain
20 queries. 17:33:46

21 What do you mean by "test certain
22 queries"?

23 A I used it to look at the variables that
24 would be available in Walgreens' data.

25 For example, we were just talking about 17:33:50

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1 the plan type. I looked at it to see what sorts of 17:33:51
2 data appear in "plan type." That sort of thing.

3 Q Did you -- there's one thing in looking at
4 a dataset to see what fields are in it and what it's
5 comprised of, and there's another thing to run 17:33:56
6 queries on the dataset; am I correct? Those are two
7 different things?

8 A I guess you're distinguishing between just
9 reading it in and looking at it, analyzing it. I'm
10 not sure what you're -- 17:34:01

11 Q Well, what does "running a query over a
12 dataset" mean?

13 A It can mean a lot of things.
14 It can mean just doing something as simple
15 as a frequency table to determine what values 17:34:05
16 populate a certain field. It can mean taking an
17 average of a certain field. I mean, I could go on
18 forever. There's unlimited --

19 Q Did you do anything with the 2015 --

20 MR. ALEXANDER: Counsel, please let the 17:34:10
21 witness finish her answer before asking your next
22 question. Thank you.

23 MR. LEIB: I believe the witness had
24 finished her answer.

25 Q But if I'm wrong, tell me, Dr. Hilton. 17:34:13

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1	A	No, I'm finished now. Thank you.	17:34:15
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2 Q Dr. Hilton, using the 2015 sample data,
3 did you attempt to identify any transactions that
4 would be considered in the class, according to the
5 proposed definition? 17:34:19

6 A I guess, are you asking if I ran my whole
7 methodology to determine class members?

8 Q Let's start there. Did you run your whole
9 methodology over the 2015 sample data?

10	A No.	17:34:23
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11 MR. ALEXANDER: Objection to form.

12 THE WITNESS: Sorry.

13 BY MR. LEIB:

14	Q	Did you run your whole -- did you run your	
15		whole methodology over the -- in a query over the	17:34:25
16		2015 sample data to determine who would be in the	
17		class under the proposed definition?	

18 MR. ALEXANDER: Objection to form.

19 THE WITNESS: No.

20 BY MR. LEIB: 17:34:29

21 Q Did you run any part of your methodology
22 in a query over the 2015 sample data to identify
23 transactions that would be considered in the class?

24 MR. ALEXANDER: Objection to form.

25 THE WITNESS: I guess I'm not sure how to 17:34:32

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1 answer that. 17:34:33

2 I did -- I ran a lot of queries on the
3 2015 data sample, and a lot of those queries had to
4 do with the methodology that I'm putting forth to
5 identify class members. 17:34:37

6 Q So what queries did you run?

7 MR. ALEXANDER: Objection to form.

8 BY MR. LEIB:

9 Q What queries did you run over the 2015
10 sample data that had to do with the methodology that 17:34:40
11 you're putting forth to identify class members?

12 A As I said earlier, I can't sit here today
13 and give you a list of every query that I ran on the
14 2015 sample. I --

15 Q I'm asking you right now -- sorry. 17:34:46

16 MR. ALEXANDER: Counsel, please let the
17 witness answer.

18 BY MR. LEIB:

19 Q Finish your answer. Go ahead.

20 A I can't give you a list of every query I 17:34:49
21 ran on the 2015 data, or even a list of all the
22 queries I ran having to do with checking certain
23 variables, et cetera, for my class methodology.

24 I did use -- one thing that I can tell
25 you, and that's -- this is why I was saying I think 17:34:54

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1 it would be helpful if we could just go through the 17:34:55
2 filters and I can tell you whether it was something
3 that I looked into on the 2015 data or not.

4 But I did use it to identify the -- let me
5 get the phrasing right in one of my paragraphs. 17:35:00

6 Q Why don't you tell us which paragraph
7 you're referring to when you read it.

8 A Okay. So paragraph 36, for example.

9 Q Okay. What about paragraph 36?

10 A So I state that "I estimate that applying 17:35:04
11 the methodologies to the data sources described
12 herein would identify, at a minimum, thousands of
13 transactions associated with an overpayment and
14 identifiers for persons or entities in each of the
15 states identified in the Class definition for every 17:35:09
16 year from 2007 to the present."

17 And so I did run analysis on the 2015 data
18 sample to identify -- and was able to identify many
19 thousands of transactions with overpayments, and
20 many thousands of identifiers for patients and also 17:35:14
21 many thousands of identifiers for TPPs.

22 Q And your statement that you would be able
23 to do so for each of the states for every year from
24 2007 to the present is based on what?

25 A It's based on my analysis of the 2015 data 17:35:19

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1 sample and my understanding that those data are 17:35:20
2 representative of other years and states.

3 Q Did you produce the 2015 queries -- I'm
4 sorry. Strike that.

5 Did you produce the queries that you ran 17:35:24
6 on the 2015 data to counsel?

7 A I don't believe so.

8 Q Why not?

9 A I wasn't asked to do so.

10 Q You did produce some queries. Who decided 17:35:27
11 which queries would be produced to us in this case?

12 MR. ALEXANDER: Objection to form.

13 And again, I would caution the witness not
14 to disclose the substance of communications with
15 counsel. 17:35:32

16 MR. LEIB: I'm not going to go over the
17 same territory again with you, Carey.

18 Q Go ahead.

19 A The question is who decided?

20 Q Yeah. 17:35:35

21 A I don't know who decided. I didn't
22 decide.

23 Q Do you know -- do you know if all the
24 queries that you produced to counsel were produced
25 to us, to Walgreens? 17:35:39

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1 Q But you're not the PBM so you don't know 17:36:54
2 100 percent for sure; is that my understanding?

3 MR. ALEXANDER: Objection to form.

4 BY MR. LEIB:

5 Q Is that my understanding of what you're 17:36:57
6 saying?

7 I'm sorry. You're right. You can't tell
8 me what my understanding is. So that was a proper
9 objection.

10 MR. ALEXANDER: Thank you, Counsel. 17:37:00

11 BY MR. LEIB:

12 Q Are you saying "should be able to" because
13 you're not the PBM and you don't know for sure
14 100 percent whether they can produce that
15 information? 17:37:03

16 A I believe they have those data and they
17 can produce them. I've seen the PBM data here.
18 I've seen PBM data in other cases. So I do believe
19 those data exist.

20 Q I'm not asking whether you believe the 17:37:07
21 data exists and they can produce it. I'm asking if
22 you know if the data exists and they can produce it.

23 MR. ALEXANDER: Objection to form.

24 THE WITNESS: I know the data exists.

25 Whether or not they exist for the entire time 17:37:11

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```
1 | you're saying all you need is the Walgreens data. 17:46:02
```

2 And for the TPPs, you're saying you need both the

3 Walgreens and the -- and the fund -- and the PBM

4	data, correct?
---	----------------

5	A Yes.	17:46:06
---	--------	----------

6 Q And so in both cases, you need Walgreens'

7	data?
---	-------

8	A Yes.
---	--------

9	Q	And if that transaction doesn't have a 4
---	---	--

10	or a 5 in the "basis of reimbursement determination"	17:46:08
----	--	----------

11 field in the Walgreens data, do you exclude that

12	transaction?
----	--------------

13 MR. ALEXANDER: Objection to form.

14 THE WITNESS: No.

15	BY MR. LEIB:	17:46:11
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16	Q Why not?
----	------------

17 A What I have done is I have determined,

```
18 using the 2015 sample, whether -- based on the bin
```

19 number, whether a particular PBM has ever

20	adjudicated the claim using a -- has a 4 or a 5, has	17:46:15
----	--	----------

21 adjudicated a claim based on U&C in the 2015 sample.

22 If they have, then I include all of that

23 PBM's information in my -- or transaction in my

24	analysis.
----	-----------

25	Q The 4 or 5 is in Walgreens' data, correct?	17:46:20
----	--	----------

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1 A Yes.

17:46:21

2 Q It's returned by the PBM, but it's found
3 in the Walgreens data?

4 A This particular variable we're talking
5 about, yes.

17:46:24

6 PBMs will also have an indicator for
7 whether they adjudicated the claim based on U&C.
8 But this particular variable we're talking about,
9 yes, it's in the Walgreens data.

10 Q So which data do you look at to determine
11 if a transaction -- let's just take consumers.

17:46:28

12 For consumers, I thought you just said you
13 only look at the Walgreens data.

14 A That's right.

15 Q So if there's not a 4 or a 5 in the
16 transaction, would you exclude it?

17:46:32

17 A No.

18 MR. ALEXANDER: Objection to form.

19 BY MR. LEIB:

20 Q Why not?

17:46:34

21 A So as I explained a minute ago, what I'm
22 doing is, if a given bin is associated -- bin number
23 is associated with a 4 or a 5 at any time in the
24 2015 sample in the Walgreens data, then the
25 assumption is that all of its plans use U&C to

17:46:40

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1 Do you see this, Dr. Hilton? 17:52:51

2 A Kind of. It's disappearing. Hold on one
3 second. Okay. Yes, I have it up.

4 Q Looking at this data, can you tell me if
5 there are any fields that show whether the PBM used 17:52:55
6 U&C in determining the amount to pay or reimburse
7 Walgreens?

8 A Okay. I'm sorry. What was the question?
9 I'm looking at the --

10 Q Looking at this data, can you tell me if 17:53:00
11 there are any fields that show whether the PBM used
12 U&C in determining the amount to pay or reimburse?

13 A No. This -- these data do not contain
14 that information.

15 Q And what's your basis for believing that 17:53:05
16 Caremark could produce that data?

17 A It's my understanding that the PBMs have
18 that information in their possession. It's
19 something that they need to use to determine when
20 they're going to adjudicate a claim. 17:53:09

21 Q What is the basis of your understanding?

22 MR. ALEXANDER: Objection to form.

23 THE WITNESS: Other than what I just told
24 you, the fact that some of the other PBMs have it in
25 their data. It's something that -- PBMs exchange 17:53:14

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for prescriptions filled by a Steamfitters
beneficiary, would you agree that Steamfitters is
not entitled to any damage during the time the 2014
contract was in effect?

17:55:07

5 MR. ALEXANDER: Objection to form and 17:55:11
6 objection to scope.

7 THE WITNESS: I don't have an opinion
8 about that. I was asked to assume liability.

9 BY MR. LEIB:

10 Q And when you say, "I was asked to assume 17:55:15
11 liability," do you understand that instruction from
12 counsel to ask you to assume that "lower of" logic
13 was required to be used by each of the relevant PBMs
14 in the adjudication process?

15	A I think there are a lot of issues that go	17:55:19
16	into the liability aspects of the case, but my	
17	understanding is that I was asked to assume that	
18	the PSC should have been reported as the U&C or	
19	otherwise included, and that plans are entitled to	
20	U&C.	17:55:26

21 Q And that TPPs are entitled to U&C as a
22 basis for the determination of how much they pay
23 PBMs?

24	A Yes.
----	--------

25	Q	Regardless of what the contract between	17:55:29
----	---	---	----------

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1 Q Did you -- and they did so at your 18:14:36
2 instruction, correct?

3 A Yes.

4 Q Did you review the query before it was
5 produced to us? 18:14:38

6 A No. It's not my practice to review the
7 code.

8 Q So do you understand that this code
9 relates to finding a PSC price?

10 A No, other than I see it's reading in PSC 18:14:41
11 data.

12 Q So the queries that you produced to us or
13 that we received from counsel, you've never reviewed
14 those before?

15 MR. ALEXANDER: Objection to form. 18:14:45

16 THE WITNESS: I wouldn't say I've never
17 reviewed them. I've looked briefly at some code.

18 The rest, I asked my staff explain to me
19 what this code is doing. They'll walk me through
20 it. Or we just talk about it in words rather 18:14:49
21 than -- I don't look at the code.

22 BY MR. LEIB:

23 Q Do you have any experience with code
24 yourself?

25 A I do, but it's very old. 18:14:52

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1 And if the co-insurance was 25 percent, the TPP 18:27:09
2 would pay the PBM \$75, and the consumer would pay
3 Walgreens \$25; is that correct?

4 A That's my understanding, yes.

5 Q Is there a field that you look at to 18:27:13
6 determine whether an individual consumer had
7 co-payment versus co-insurance?

8 A I used the -- I calculated it myself.

9 So I looked at the consumer portion
10 divided by the total amount paid by the consumer and 18:27:16
11 the TPP for a given PBM in a given month.

12 And if 90 percent of those transactions
13 were the same percentage, then I assumed that it was
14 a co-insurance situation. Otherwise, it was a
15 co-payment situation. 18:27:23

16 Q So that's the number you used, 90 percent.
17 If 90 percent of the time it was the same
18 percentage, then you decided it was co-insurance?

19 A Yes. It's my understanding that there are
20 some variables in Walgreens' data that potentially 18:27:28
21 have information on that, and also that the PBMs
22 would have information on that.

23 But this is the way that I did it with
24 what -- the data that I have currently.

25 Q What data were you looking at to determine 18:27:32

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1 that?

18:27:33

2 A To determine what? Sorry.

3 Q Whether 90 percent had a certain
4 percentage.

5 A So I was looking at -- for the PBM data
6 merged onto the Walgreens data.

18:27:36

7 If the consumer payment from the Walgreens
8 data, the TPP payment from the PBM data, the sum of
9 those becomes the denominator, the consumer payment
10 is the numerator, and if that percentage is greater
11 than -- if I see that percentage is greater than
12 90 percent of the transactions for a given month for
13 a given PBM, then I assume that it's a co-pay --
14 excuse me -- co-insurance situation.

18:27:41

15 Q And if it was 89 percent of the time, you
16 would figure it was co-pay?

18:27:48

17 A Yes. That's the current methodology.

18 Q What are you looking at -- what are we
19 getting as the sum total that we're trying to find a
20 denominator for? How do we determine that
21 denominator? What are we looking at? Is it for an
22 individual?

18:27:52

23 So Bob Smith, we're looking at all Bob
24 Smith's transactions in a month?

25 A No. This is a transaction-by-transaction

18:27:57

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```
1      A    So I only have transactions for                18:29:26
2      Steamfitters at this point.
```

3 Q Okay. So then you're only looking at one
4 plan. What's your methodology if there's more than
5 one plan? 18:29:29

6 A So like I said earlier, I believe that the
7 PBMs would be able to give that information. And I
8 also believe there are variables in Walgreens' data
9 that indicate co-insurance. But that's not
10 something I looked at at this point. I did -- I 18:29:34
11 used the methodology that I just described for the
12 data that I have.

13 Q We looked at -- first of all, what
14 fields -- what fields are you talking about?

15 MR. ALEXANDER: Objection to form. 18:29:38

16 BY MR. LEIB:

17 Q In the PBM data, what fields are you
18 talking about?

19	A I don't have a particular field name in	
20	the PBM data. That would be something that we would	18:29:41
21	ask them to produce.	

22 Q Well, do you know if they have data that
23 would differentiate between -- I'm sorry -- if they
24 have fields that would differentiate between co-pay
25 and co-insurance? 18:29:45

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1 A I assume they do because they need it to 18:29:45
2 adjudicate the claim.

3 MR. LEIB: Well, let's look at Tab R, and
4 mark that as Exhibit 526.

5 (Exhibit 526 was marked for identification 18:29:49
6 and is attached hereto.)

7 MR. WOROBIJ: Exhibit marked.

8 BY MR. LEIB:

9 Q Do you see any fields here that are either
10 co-pay or co-insurance? 18:29:51

11 And this is Express Scripts data 1548, ESI
12 1548.

13 MR. ALEXANDER: Objection to form.

14 MR. LEIB: I'm just putting -- what's the
15 form? I'm telling what the Bates number is. It's 18:29:55
16 ESI 1548.

17 MR. ALEXANDER: I have no objection to
18 that aspect of the question.

19 MR. LEIB: There you go.

20 Q Do you see -- I'll just point you to it. 18:29:58

21 Do you see in column K, it says, "bill
22 patient pay amount," and under that it says, "co-pay
23 amount"?

24 A I'm not there. Hold on. I was just
25 looking at the rest of the variables here. 18:30:02

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1 Bush Administration and the Obama Administration, 18:31:30
2 and now the donut hole is down to 25 percent
3 co-insurance, just to let you know.

4 A Okay.

5 Q Have you heard the -- that there's a 18:31:34
6 catastrophic phase after the donut hole?

7 A I have heard --

8 MR. ALEXANDER: Objection to form.
9 Objection to scope.

10 BY MR. LEIB: 18:31:37

11 Q And are you aware that that could be
12 co-insurance or co-pay?

13 MR. ALEXANDER: Same objections.

14 THE WITNESS: I don't have an
15 understanding of that. 18:31:39

16 BY MR. LEIB:

17 Q So if, in fact, the plan had both
18 co-insurance and co-pay in with it, your methodology
19 could end up causing you to assign everybody a
20 co-pay, because it wasn't 90 percent of the 18:31:43
21 individual transactions, correct?

22 A Well, my methodology actually is -- the
23 PBMs will turn over data that has that information.
24 So that's my first line.

25 What I have done at this point is the 18:31:47

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1 All right. This will conclude the 19:28:55
2 deposition of Lynette Hilton, Ph.D. The total
3 number of media units used in today's deposition was
4 nine and will be retained by Veritext Legal
5 Solutions. 19:29:03

6 We are going off the record. The time
7 is 7:29 p.m. Pacific Standard Time. Thank you all.

8 (TIME NOTED: 7:29 p.m.)

9 --o0o--
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25

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [x] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: January 23, 2023

23 Carla Soares

24
25 CARLA SOARES

CSR No. 5908